

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES ERNEST DICKERSON,

Petitioner,

v.

JEFEREY UTTECHT,

Respondent.

CASE NO. C13-5085 RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR:

MAY, 3, 2013

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge, J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction. Thus, the petition is filed pursuant to 28 U.S.C. § 2254.

This petition is second or successive as was the petition filed earlier this year, 13-5068RJB. Under Ninth Circuit Rules the petition must be transferred to the Ninth Circuit. The Court recommends that the Clerk's Office be directed to close the file and refer the petition to the Ninth Circuit.

PRIOR FILINGS

In 2005, petitioner filed a habeas corpus petition that challenged the same conviction as the one he challenges today. *See Dickerson v. Porter*, C05-5793RJB. The Court denied the

petition as time barred (C05-5793RJB ECF No. 99). The Ninth Circuit denied a certificate of appealability (C05-5793RJB ECF No. 129). This petition is a second or successive petition.

If a petition is second or successive, then petitioner must seek authorization from the Court of Appeals before filing the new petition with the district court. 28 U.S.C. § 2244(b)(3)(A).

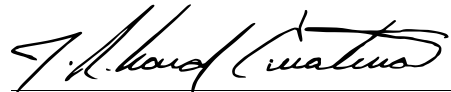
Ninth Circuit Rule 22-3(a) provides guidance:

Any petitioner seeking leave to file a second or successive 2254 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An original and five copies of the application must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a second or successive petition or motion, or application for leave to file such a petition or motion, is mistakenly submitted to the district court, the district court shall refer it to the court of appeals.

The Court recommends that this petition be referred to the Ninth Circuit and that the file be administratively closed without deciding whether the petition should be dismissed.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on May 3, 2013, as noted in the caption.

Dated the 29<sup>th</sup> day of March, 2013.



J. Richard Creatura  
United States Magistrate Judge